No. 523

In the Supreme Court of the United States

OCTOBER TERM, 1955

JOAN GREENWAY COLLINS, WIDOW, AND CARROLL LEE COLLINS, MINOR CHILD OF ADOLPHUS HENRY COLLINS, DECEASED, PETITIONERS,

vs.

AMERICAN BUSLINES, INC., RESPONDENT EMPLOYER,
THE INDUSTRIAL COMMISSION OF ARIZONA, RESPONDENT INSURANCE CARRIER.

BRIEF OF PETITIONERS

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clusive as regards injuries received outside this state." While the California statute contains the usual exclusive jurisdiction provision,[1] the provision is not regarded as having extraterritorial application. That point was specifically noted by this Court concerning the California statute in *Alaska Packers Assn. v. Industrial Accident Comm.*, 294 U.S. 532, 540 (1935). As a practical matter, California follows the usual practice of giving a local workmen's compensation remedy in supplement to any remedy which may be given by the workmen's compensation law of another jurisdiction, subject to the policy of avoiding double compensation under the *McCartin* rule. See, for example, including full discussion, *Industrial Indemnity Exchange* v. *Industrial Accident Comm.*, 80 C. A. 2d 480, 182 P. (2d) 309 (1947). In short this case is covered by the second category analyzed in the dissenting opinion in *Carroll* v. *Lanza, supra*: it is one of those in which the forum may apply its own statute rather than that of a sister state because the latter is not of limiting exclusiveness. 349 U. S. at 415.

Not merely does allowance of recovery by the state of the injury avoid conflict with California law in a technical sense; it also accords with the basic policy of California itself in favor of allowing recovery at the place of injury; as this Court has already had occasion to note and approve in *Pacific Employers Insurance Co.* v. *Industrial Accident Commission of California*, 306 U. S. 493 (1939). In that case California made an award to an employee

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[1] "Where the conditions of compensation exist, the right to recover such compensation, pursuant to the provisions of this division is, except as provided in Section 3706 [not relevant here], the exclusive remedy against the employer for the injury or death." Deering Cal. Code Ann., Labor, Sec. 3601.

The California Code also provides, *id.*, Sec. 5305, that "the Commission has jurisdiction over all controversies arising out of injuries suffered without the territorial limits of this State in those cases where the injured employee is a resident of this State at the time of the injury and the contract of hire was made in this State." We put aside the latter section without further comment since in this case the contract of employment was not made within the State, noting only that on its face this clause does not purport to be exclusive even if the contract were made within the State.

of a Massachusetts corporation who was regularly employed in Massachusetts and was only temporarily in California on business at the time of his injury. This Court noted that while both states involved had "exclusive" laws, neither could "determine the choice of law to be applied in the other." *Id.* at 500. This Court upheld the authority of a state

> "to legislate for the bodily safety and economic protection of employees injured within it. Few matters could be deemed more appropriately the concern of the State in which the injury occurs or more completely within its power." 306 U. S. 503.

In short, this Court has on several occasions and after the fullest consideration held that, under three provisions of the Constitution, it was wholly proper for the state of injury to provide a remedy for the consequences of injury. In the various cases cited above, the matter has been emphasized in terms of medical costs, in terms of avoidance of public charges, in terms of protection of dependents. As will be developed more fully in the immediately next section of this brief, nothing in the commerce clause requires that the powers of the state of injury, upheld as to every other category of employment, should be eliminated as to transportation workers.

III. The Constitution Permits the State of Injury to Govern the Consequences of Injury—the Argument from the Commerce Clause.

One may have his doubts, as some members of this Court obviously do, whether any state regulation of commerce which is non-discriminatory should be invalid under the commerce clause; cf. *Gwin, White & Prince* v. *Henneford*, 305 U. S. 434, dissent at 442 (1939). But it is unnecessary to stir those waters of controversy in the instant case, for even under the most conventional view of the matter there is here no such burden as should be held invalid. This is "a police regulation of local aspects of interstate commerce" which "is a power often essential to a state in safeguarding vital local interests." *Freeman* v. *Hewit*, 329 U. S. 249, 253 (1946). As will be developed more fully, the only possible burden on commerce in this case is a minor expense. The only

cases in recent years in which this Court has invalidated a police-type regulation either for conflict with the commerce clause or a statute enacted thereunder has been in instances of what were felt to be severe cripplings of interstate commerce. See *Castle* v. *Hayes Freight Lines*, 348 U. S. 61 (1954) (state may not revoke operating licenses of motor carrier altogether for violation of weight requirements, but may use appropriate penalties); *Dean Milk Co.* v. *Madison*, 340 U. S. 349 (1951) (Madison milk regulations regarded by the majority as an outright discrimination against interstate commerce); *Hood* v. *Du Mond*, 336 U. S. 525 (1949) (majority view that a state might not refuse to license altogether an interstate business on the ground that its commodities were needed locally).

We remind the Court that there is in the instant case no question of duplicating the liability of a carrier. The entire burden is thought to be that of requiring added insurance by virtue of making the company subject to liability in more states than one. The states retain power, even in the area of interstate commerce, to require those things to be done which are "reasonably related to the necessity for protecting the local interests on which the power rests." *Panhandle Pipe Line Co.* v. *Public Service Comm.*, 332 U. S. 507, 523 (1947). Numerous regulations of motor carriers, each palpably more burdensome than that here involved, have been consistently upheld by this Court. The states have the power to regulate truck weights, *Morris* v. *Duby*, 274 U. S. 135 (1927); make net load requirements, *Sproles* v. *Binford*, 286 U. S. 374 (1932); restrict the width of trucks materially below the normal truck width in use throughout the country, *South Carolina State Highway Department* v. *Barnwell Bros.*, 303 U. S. 177 (1938); and restrict the practice of vehicles carrying other vehicles in forbidden manners, *Maurer* v. *Hamilton*, 309 U. S. 598 (1940). The states may also control routes, *Bradley* v. *Public Utilities Com.*, 289 U. S. 92 (1933) and advertising on vehicles, *Railway Express Agency, Inc.* v. *New York*, 336 U. S. 106 (1949).

The foregoing cases which bear very obviously on safety con-

siderations uphold the power of the states to regulate. This factor is also present in the instant case if interstate carriers are found liable under Arizona compensation standards, they may be more careful about using the type of tire which blew out and caused the death of Collins.

The state power over insurance has also been directly upheld. The power of the states to require interstate carriers to furnish adequate insurance at least for persons other than passengers was approved in *Sprout* v. *South Bend*, 277 U. S. 163, 172 (1928), followed in *Continental Baking Co.* v. *Woodring*, 286 U. S. 532 (1932); *Hicklin* v. *Coney*, 290 U. S. 169 (1933). It may be that those decisions have been swept into the discard by the portions of the Motor Carrier Act in 1935 discussed in the first section of this brief which do govern certain types of insurance other than workmen's compensation. The point remains that, in the absence of statute, the right to make reasonable insurance requirements has been upheld in the states so long as there is no conflict with a federal statute; and in the instant case there is no such conflict.

While the exact question of workmen's compensation has not been considered in this Court, it has been touched upon in state decisions. For collected cases, see 138 A.L.R. 956 and 148 A.L.R. 873. We find only one case asserting that it is an unconstitutional burden on commerce for a state to give compensation to an interstate driver injured within its borders; see *Spohn* v. *Industrial Commission*, 133 Ohio St. 42, 32 N.E. (2d) 554 (1941). The accident in this case considerably antedated the decision of the United States Supreme Court in *Pacific Employers Insurance Company* v. *Industrial Accident Commission*, *supra* (1939), which gave a substantial new bent to the law of interstate relations in favor of allowing compensation by the state of the injury, and this case was apparently not called to the attention of the Ohio Supreme Court in *Spohn*, which did not mention it. Subsequent Ohio decisions have very nearly limited the *Spohn* case to its facts, *Holly* v. *Industrial Commission*, 142 Ohio St. 79, 50 N.E. (2d) 152, 156 (1943), restricting the *Spohn* case to situations in which the employer does no intrastate business whatsoever. See in that

same spirit of avoidance of the *Spohn* rule, an earlier case, *Hall v. Industrial Commission*, 131 Ohio St. 416, 3 N.E. (2d) 367 (1936). We particularly emphasize this distinction in Ohio because the Court below followed it, see particularly Appendix, p. 20; in short, the Arizona understanding is that application of a state workmen's compensation law to an interstate motor carrier is invalid because of added insurance premiums which will have to be paid therefor if, and only if, the employer is engaged *exclusively* in interstate commerce. In petitioners' view, the burden is no greater in the one case than in the other; the burden on interstate commerce is the same either way.

The New York cases have not had the reservations of Ohio, New York having taken the view that in the absence of federal regulation the state workmen's compensation laws are applicable. See *Etters v. Trailways of New England, Inc.*, 266 App. Div. 929, 43 N.Y.S.2d 884 (1943), *Anslow v. Spring*, 272 App. Div. 1091, 74 N.Y.S.2d 782 (1947). See for a similar view *Buckingham Transp. Co. v. Industrial Commission*, 93 Utah 342, 72 P. (2d) 1077 (1937). See also the application of the same view to airlines, *Spelar v. American Overseas Airlines, Inc.*, 80 Fed. Supp. 344, 347 (S.D., N.Y., 1947), disposed of on unrelated grounds here, 338 U.S. 217 (1949).

The Court below was led to its result here by its interpretation of *Southern Pacific Co. v. Arizona*, 325 U.S. 761 (1945), a case in which it had previously been reversed for upholding the Arizona train limitation law over commerce clause objections. We believe that case to be distinguishable both on its facts and on its theory. As for its facts, the Court found there what it regarded as a very severe burden on interstate commerce, materially and adversely affecting the flow of transportation from El Paso to Los Angeles; it found no perceptible benefit in the legislation, concluding that it probably hindered safety as much as it helped it; and it reached this conclusion on a record which documented just what the burdens and the benefits were supposed to be. In the instant case there is no record showing any burden, which is at most slight, and no one supposes that compensation is in any way

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injurious to road safety; on the contrary, it probably increases it. Finally, the Court in *Southern Pacific* specifically reserved what it regarded as the superior jurisdiction of states over their highways, as apart from railroads, distinguishing *South Carolina State Highway Department v. Barnwell Bros., supra*, solely on this ground. See 325 U.S. at 783, emphasizing "that there are few subjects of state regulation affecting interstate commerce which are so peculiarly of local concern as is the use of the state's highways."

Not only is there an absence of anything in the record which would show the existence of a burden—and the *Southern Pacific* case reminds that state regulations of commerce "will not be invalidated without the support of relevant factual material which will 'afford a sure basis' for an informed judgment," 325 U.S. at 770—but, on the face of it, it is hard even to imagine a substantial burden on interstate commerce. As the Court said in the *Southern Pacific* case, the question is "whether the relative weights of the state and national interests involved are such as to make inapplicable the rule, generally observed, that the free flow of interstate commerce and its freedom from local restraints in matters requiring uniformity of regulation are interests safeguarded by the commerce clause from state interference." *Id.*, 770, 771. In the instant case, the burden consists solely and exclusively of paying extra insurance premiums, while the benefit to the state is that whole group of values which have already been held sufficient to uphold state regulation under the due process, full faith and credit, and contract clauses. The employer would not even have to take out two policies; Arizona law authorizes it, if it wishes, to take out a policy with any of the recognized insurance carriers, 23-961, R.S.A., though some increase of premium results.

The burden thus comes to the cost of insurance premiums. We know of no case in which a police power regulation doing much good to the state, involving no inconvenience to commerce of any kind, and taking only a small sum of money for compliance has been held invalid, at least in the absence of discrimination. As the factual analysis at the beginning of this brief

and in Appendix A shows, if the practice of requiring compensation in the state of injury were to become universal, the cost would be very nearly *de minimis*. We do not suggest that a regulation is automatically valid because it is small. We do assert that when the burden on commerce is weighed against the benefit to the state, this burden is minuscule, and the benefit very great. It is one of the common facts of life that any carrier as well as any employer operating in more states than one must carry insurance adequate to meet the highest liability of any of those states as well as the lowest. Indeed, until recent amendments to the Federal Employers Liability Act somewhat limited the practice, that statute almost put a premium on forcing employee accident cases into the state of highest compensation, carrying the insurance rates along with it. See *Ex Parte Collett*, 337 U.S. 55 (1949). If the respondent company wished to do business in more states than California there is no more reason to construe the Constitution of the United States to limit his insurance charges to those which may be required for California liability than to limit his obligations as to bus weight, load, speed, license fees, proper taxes, and all the other impositions which the state of operation may assert.

CONCLUSION

It is settled by the decisions of this Court that the workmen's compensation law of the state of injury may, if that state wishes, apply to all employees not engaged in interstate commerce. It is held by the state courts which have considered the issue, and is conceded by the Court below, that the same rule should apply to motor carriers engaged in *both* interstate and intrastate commerce. The jurisdiction of the state of injury thus may extend, so far as the Federal Constitution is concerned, to what must be well over 99% of the employees of the country.

There is no ground for excepting from this benign general rule the comparative handfull of employees whose employers are engaged exclusively in interstate commerce. The Court below, accepting the generous compensation policy of its state, was clearly most reluctant to reach the harsh result it felt compelled to estab-

lish by its understanding of this Court's decision in *Southern Pacific Co. v. Arizona, supra*. It should be relieved of that compulsion.

Respectfully submitted,

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APPENDIX A

SELECTED STATISTICS ON PROPORTION OF WORKMEN'S COMPENSATION EXPENSE TO OTHER EXPENSES OF MOTOR CARRIERS

The following figures, except the percentages, are taken from *Statistics of Class I Motor Carriers for the Year Ended December 31, 1953*, published by Bureau of Transport Economics and Statistics, Interstate Commerce Commission, July, 1955.

I. **Operation and Maintenance Expenses, Common Carriers of General Freight, Owned Equipment, 536 Carriers. P. 15.**

Equipment Maintenance		$119,914,002
Transportation		353,319,519
Terminal		158,597,846
Traffic		30,181,845
Insurance and Safety		
Supervision	4,068,600	
Office and other expenses	1,304,967	
Public liability and property damage	15,302,919	
Workmen's compensation	6,522,967	
Cargo loss and damage	15,342,837	
Fire, theft and collision	3,619,958	
Other insurance expense	751,662	
Other insurance and safety department expenses	193,069	
Operating rents	56,946	
Total Insurance and Safety		47,163,925
Administrative and General		73,636,654
Grand Total		$782,813,761
% of Workmen's Compensation to Total		0.833276%

II. **Same, owned and Leased Equipment or purchased transportation, 564 Carriers. P. 27.**

Equipment Maintenance	$139,665,772
Transportation	729,545,496
Terminal	203,602,211

Traffic		45,577,866
Insurance and Safety		
Supervision	6,305,437	
Office and other expenses	2,037,612	
Public liability and property damage	30,118,500	
Workmen's compensation	8,556,630	
Cargo loss and damage	23,909,522	
Fire, theft and collision	4,598,269	
Other insurance expense	891,514	
Other insurance and safety department expenses	193,060	
Operating rents	71,699	
Total Insurance and Safety		76,682,243
Administrative and General		97,742,669
Grand Total		$1,292,816,257
% of Workmen's Compensation to Total		0.66186%

III. **Operation and Maintenance Expense, Carriers of Passengers in Intercity Service, 161 Carriers. P. 61.**

Equipment Maintenance and Garage Expense		$ 68,717,146
Transportation Expense		124,516,311
Station Expense		43,696,079
Traffic, Soliciation, and Advertising Expense		14,063,805
Insurance and Safety Expense		
Salaries and expenses—Insurance and safety	1,847,063	
Public liability and property damage insurance	5,326,874	
Injuries and damages	5,186,772	
Workmen's Compensation—Insurance	817,856	
Workmen's compensation—Self-insurer	160,825	
Baggage and express insurance	3,532	
Baggage and express loss and damage	162,197	
Fire and theft insurance	704,097	

Other insurance	411,426	
Total insurance and safety		14,620,642
Administrative and General Expense		27,436,646
Grand Total		$293,050,629
% of Workmen's Compensation to Total		0.33396%

IV. Operation and Maintenance Expenses, 63 Carriers Engaged in Local or Suburban Service, P. 70.

Equipment Maintenance and Garage Expense		$22,802,688
Transportation Expense		60,175,790
Station Expense		1,642,303
Traffic, Solicitation, and Advertising Expense		1,320,741
Insurance and Safety Expense		
Salaries and expenses—		
Insurance and safety	1,038,618	
Public liability and property damage insurance	2,242,257	
Injuries and damages	1,906,125	
Workmen's compensation Insurance	177,205	
Workmen's compensation— Self insurer	123,756	
Baggage and express insurance	547	
Baggage and express loss and damage	1,388	
Fire and theft insurance	223,540	
Other insurance	59,880	
Total insurance and safety		5,773,316
Administrative and General Expense		9,467,047
Grand Total		$101,181,885
% of Workmen's Compensation to Total		0.29745%

V. Aggregate Comparison of Above Tables.

Total Expenses, Group I, *supra*	$782,813,761
Workmen's Compensation, Group I, *supra*	6,522,967

Total Expenses, Group II, *supra*	1,292,816,257
Workmen's Compensation, Group II, *supra*	8,556,630
Total Expenses, Group III, *supra*	293,050,629
Workmen's Compensation, Group III, *supra*	978,681
Total Expenses, Group IV, *supra*	191,181,885
Workmen's Compensation, Group IV, *supra*	300,961
Total Expenses, all four groups	$2,469,862,532
Total Workmen's Compensation, all four groups	$16,359,239
% of Workmen's Compensation cost to all costs, on all carriers classified	0.66235%

the bottom of paragraph 2, page 17. The option given in the statute would be completely nullified by requiring the employer to carry his insurance with a private carrier rather than the state fund. The end result sought by petitioners would require new legislation in Arizona. It cannot be reached under existing statutes. The same reasoning prevents an application of petitioners' theory when we consider the basis for compensation benefits. This matter was thoroughly considered and discussed in the opinion below (Record Appendix page 22). To permit the end result sought by petitioners here likewise would necessitate additional Arizona legislation. The existing statute does not permit such a result.

Returning again to the opinion below, we refer to the following language appearing on page 21 of the Record Appendix:

> "* * * We do not decline jurisdiction merely for the reason that decedent was engaged in interstate commerce, but in view of an additional consideration — that he was also covered in another jurisdiction * * *."

Obviously the Court was considering all of the facets of the Arizona Act when it made the above statement, and we have a clear indication that interstate commerce itself and the federal commerce clause need not necessarily be the controlling factor.

The Court below has placed no burden of any nature upon the federal authority. True, it has cited the commerce clause as a reason for its holding. Analysis of the opinion, however, clearly indicates reasons for

APPENDIX B

EXTRACT FROM LETTER FROM INTERSTATE COMMERCE COMMISSION CONCERNING COMMISSION JURISDICTION OVER COMPENSATION INSURANCE OF MOTOR CARRIERS

INTERSTATE COMMERCE COMMISSION
Bureau of Motor Carriers
Washington 25

February 1, 1956
Refer to K-GCW

Mr. John P. Frank
Lewis, Roca, Scoville & Beauchamp
919 Title & Trust Building
Phoenix, Arizona

Gentlemen:

This will acknowledge your letter of January 20 concerning the question of workmen's compensation insurance as it affects interstate motor carriers. It is quite clear to us that this Commission takes no jurisdiction of workmen's compensation insurance for interstate motor carriers with the exception that the motor carrier applying to this Commission for permission to self-insure either bodily injury and property damage liability or cargo liability must indicate what disposition is made of his employer's liability obligation. However, the reason for inquiring in these instances is to assure sound financial conditions for the authorization for the type of self-insurance for which application is being made.

To our knowledge there is no publication of this Commission which will bear on this question, with the possible exception of BMC Form 90 which is the endorsement form prescribed by this Commission for attachment to motor carrier policies of insurance for automobile bodily injury and property damage liability. This form says in part, "excluding injury to or death of the insured's employees while engaged in the course of their employment." Copy of this form is enclosed herewith. . . .*

Very truly yours,
/s/ W. Y. Blanning
W. Y. Blanning, Director

*One paragraph relating to a different subject has been deleted. The original of the entire letter has been placed on file with the Clerk of this Court.